



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/174045

PRELIMINARY RECITALS

Pursuant to a petition filed May 2, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA), a hearing was held on May 25, 2016, at Milwaukee, Wisconsin.

The issue for determination is: Whether the Department correctly determined that the petitioner was overpaid BadgerCare Plus benefits totaling \$2,232.67 in the period of February – July, 2015, due to a “failure to report income” client error.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

█

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED] HSPC
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She was certified as eligible for BadgerCare Plus in the period of February – July, 2015, by the Department, and the Department paid capitation rate payments for this coverage totaling \$2,232.67 in this period. See, Exhibit #5.

2. On September 18, 2014, the petitioner reported to the Milwaukee agency that she was no longer working at [REDACTED], and her case was pended to verify this fact. On September 24, 2014, the petitioner and her former employer verified that she had zero hours work. On October 1, 2014, a copy of the petitioner's final paystub was received.
3. On October 2, 2014, the agency issued a written notice to the petitioner informing her that she was eligible for BadgerCare Plus without a premium, effective October 1, 2014, and also warning her that she must report if household income exceeds \$972.50. See, Exhibit #3.
4. On November 7, 2014, another written notice was issued to the petitioner informing her that there was no change in her BadgerCare Plus benefits and warning her that she must report if the household's total monthly income exceeded \$1,265, within 10 days of such a change. See, Exhibit #3.
5. On October 24, 2014, the petitioner began working at [REDACTED]; and on December 23, 2014, she also began working at [REDACTED] on December 23, 2014. Finally, she also began picking up hours at [REDACTED] again in January, 2015. See, Exhibit #2. She did not report these jobs or earnings to the agency at any time.
6. On February 16, 2015, the agency sent a notice to the petitioner telling her that her Food Stamps benefits would end because she had not filed a six month report form as required, but her health care benefits would continue. See, Exhibit #3, Notice dated February 16, 2015.
7. On June 10, 2015, the agency received a wage crossmatch alert from the Department of Workforce Development indicating that the petitioner had earned income in excess of that being budgeted for the petitioner in her BadgerCare Plus case, and it issued a written verification request on June 11, 2015, to the petitioner for proof of all wages from [REDACTED] of Wisconsin, [REDACTED], and [REDACTED] for the last 30 days. These verifications were due by June 22, 2015. See, Exhibit #3.
8. The verifications were not received by the agency by June 22, 2015. See, Exhibit #1, attached Case Comments on the date of July 1, 2015.
9. On July 6, 2015, a notice was issued to the petitioner informing her that her BadgerCare Plus benefits would be discontinued effective August 1, 2015. See, Exhibit #3.
10. On or about March 25, 2016, all three named employers provide verification of the petitioner's earnings, including for the period of February – July, 2015. See, Exhibit #2.
11. On March 28, 2016, the Department issued a Medical Assistance/BadgerCare/BadgerCare Plus Overpayment Notice to the petitioner informing her that it had determined that she had been overpaid \$2,232.67 in BadgerCare Plus benefits in the period of February – July, 2015, due to a failure to report household income exceeding program limits due to a client error. Attached was a copy of a worksheet demonstrating how the overpayment was calculated. No specific services were utilized by the petitioner generating any item expenses for medical services, but the Department did pay a monthly capitation rate for her BC+ coverage as an individual totaling \$2,232.67, as listed in the Summary Claim #9900461629 document attached to Exhibit #5.
12. On May 2, 2016, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the agency determination that she was overpaid \$2,232.67 because she asserted that she was unaware she remained covered in the time period of February-July, 2015, believing that her coverage had expired when she did not file the six month report form; and asserting that she did not access services in the overpayment period either.

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the department's BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

An overpayment is determined as follows: "If the case was ineligible for BC+, recover the amount of medical claims paid by the state and/or the capitation rate. Use the ForwardHealth interChange data from the Total Benefits Paid by Medicaid Report(s). Deduct any amount paid in premiums (for each month in which an overpayment occurred) from the overpayment amount." Handbook, App. 28.4.2.

The petitioner was informed that she was actually receiving BadgerCare Plus, that she had reporting requirements if she started working again, started working again within 3 months at three different jobs simultaneously, did not report any of these jobs to the agency, and finally, did not timely respond to verification requests about the job, supplying the data 10 months after it was requested.

She was informed that her eligibility was ongoing, and even when she was informed FS was going to end because the six month report form had not been received she was also informed in the same notice that her BC+ coverage *was continuing uninterrupted*. See, Exhibit #3, attached Notice dated February 16, 2016.

And yet, she did not report any of the three employments that would have affected or ultimately, ended her eligibility. The law does not say that the failure to report must be intentional; the failure can be due to a mistake or misunderstanding. I am satisfied that she was fully informed of both the continuity of BC+ coverage and the need to report new wages. The overpayment determination for failure to report information that would have affected her BC+ eligibility was fully justified by the preponderance of the evidence in this record. The overpayment is sustained.

CONCLUSIONS OF LAW

The Department correctly determined that the petitioner was overpaid \$2,322.67 in BadgerCare Plus benefits in the period of February – July, 2015, due to client error in failing to report new employments.

THEREFORE, it is

ORDERED

That the petitioner for review herein be, and the same hereby is, dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 9th day of June, 2016

\sKenneth D. Duren, Assistant Administrator
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 9, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability